IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

WP(C).No. 11351 of 2007(B)

PETITIONER:

BEACH HERITAGE INN (P) LTD.,
BEACH ROAD, KOZHIKODE, REPRESENTED BY ITS MANAGING DIRECTOR, K.T.JOSEPH.

BY ADV. SRI.N.MURALEEDHARAN NAIR,
SRI.V.K.SHAMUSUDHEEN.

RESPONDENTS:
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1. **COMMERCIAL TAX OFFICER (WC & LT),**
   SALES TAX COMPLEX, JAWAHAR NAGAR, KOZHIKODE.

2. **DEPUTY COMMISSIONER (APPEALS),**
   COMMERCIAL TAXES, KOZHIKODE.

3. **DEPUTY TAHSILDAR (R.R), KOZHIKODE.**

BY SR. GOVT. PLEADER SRI. MOHAMMED RAFIQ.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/04/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C) NO. 11351 OF 2007-B

JUDGMENT

The petitioner attacks Ext.P13 order. It is an order disposing of three stay applications filed by the petitioner in STA Nos.26, 27 & 28/2007. In those appeals, it challenges the assessment of luxury tax for the years 2002-03, 2003-04 and 2004-05. The petitioner was earning some amount by giving on rent the lawn of its hotel and also tables, chairs, plates, cups etc., for various functions held in the lawn. According to it, only a person residing in a room of the hotel is liable for luxury tax and not the persons using the aforementioned facilities for marriage functions, birthday parties etc. The appellate authority felt that the petitioner has made out a prima facie case and therefore, granted stay on condition of payment of 50% of the tax demanded. According to the petitioner, absolute stay should have been granted on making out a prima facie case.

2. I heard the learned Government Pleader for the respondents also. The point raised by the petitioner on the merits of the case, is a matter which should be finally decided by the appellate authority. The appellate authority, without taking into account the balance of convenience, has

granted stay on payment of 50% of the amount, finding a prima facie case. The decision of the appellate authority runs counter to the decision of the Apex Court in **Asst. Collector C. E., Chandan Nagar v. Dunlop India Ltd**. (AIR 1985 SC 330). In the said decision the Apex Court has specifically stated that the finding of a prima facie case on merits will not be sufficient to grant stay. The Apex Court held that the balance of convenience should also be in favour of the assessee. So, going by the above principles laid down by the Apex Court, I find that stay has been granted on very liberal terms. But, having regard to the facts of the case, the petitioner is given time up to 16.4.2007, to pay the amount directed to be paid under Ext.P13 order.

Subject to the above direction, the writ petition is dismissed.

2nd April, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/